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DEC 17 1992

STATE OF MAINE

SUPREME JUDICIAL COURT

SUPREME JUDICIAL COURT

Docket No. BAR-92-15

BOARD OF OVERSEERS OF THE BAR)

v.)

PETER C. FESSENDEN)

OPINION AND ORDER

This matter was heard by the Court at Portland on December 1, 1992, and at Augusta on December 11, 1992, on an information filed by the Board of Overseers of the Bar against attorney Peter C. Fessenden. The Board was represented by Bar Counsel, J. Scott Davis, and the defendant was represented by Donald H. Marden. In his answer and in his testimony, the defendant admits "that he has not been fully punctual in his professional commitment to [a client] and that he has not been successful in keeping his client informed on the status of the client's affairs." The defendant offered explanations for his conduct, while conceding that the explanations did not excuse his failure. The Court concludes that Peter C. Fessenden has violated M. Bar R. 3.6(a) and 3.6(a)(3).

The Court finds that Fessenden is a competent and hard-working attorney who at times has assumed responsibility for the performance of legal duties in excess of his capacity. Moreover, when confronted with his client's concern about inactivity, Fessenden is sometimes handicapped in his ability to properly and competently dispose of the matter. The Court

concludes that such circumstances, in the absence of serious harm to the client, would normally call for a reprimand. Unfortunately, Fessenden received a public reprimand from a panel of the Grievance Commission on June 4, 1991, for conduct remarkably similar to that which is presently before the Court.

The complaining client continues to be represented by Fessenden and desires that he complete the task for which he was retained. Fessenden's responsibility to that client, as well as his other responsibilities, would be seriously disrupted if he were suspended from the practice of law. Both Bar Counsel and defense counsel remind the Court that the purpose of the proceeding "is not punishment but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties." M. Bar R. 2(a). The Court is satisfied that purpose can be accomplished in this instance by a probationary period based upon a suspended suspension.

Accordingly, it is ORDERED that Peter C. Fessenden be suspended from the practice of law for a period of thirty days, and it is FURTHER ORDERED that his suspension be suspended for a period of two years and until further order of the Court, subject to the following conditions:

1. The defendant shall diligently pursue the legal matter that is the subject of the present complaint.
2. The defendant and/or his partners shall promptly establish a method for objectively identifying delinquent client matters.

3. The defendant shall file a confidential report to the Court every six months concerning the following subjects:
 - (a) measures he has taken to avoid delinquencies; and
 - (b) any client matter identified as delinquent; and
 - (c) any professional assistance he has received.
4. Bar Counsel may file an information concerning any further complaints against the defendant without the necessity of Grievance Commission review.

Dated: December 17, 1992

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David G. Roberts
Associate Justice